

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALAN JUSTIN SMITH,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

CASE NO. 2:21-cv-00940-TL

ORDER GRANTING IN FORMA
PAUPERIS ON APPEAL, DENYING
TIME EXTENSION, AND DENYING
CERTIFICATE OF APPEALABILITY

This matter is before the Court on Petitioner’s Motion for Leave to Appeal *In Forma Pauperis* (Dkt. No. 59), Motion for Extension of Time to File Amended Motion for Certificate of Appealability (Dkt. No. 63), and Amended Motion for Certificate of Appealability (Dkt. No. 65). Petitioner was not granted *in forma pauperis* (“IFP”) status in this Court, but instead proceeded with his petition after paying the required filing fee. See July 15, 2021, Docket Entry.

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1 Petitioner now requests leave to appeal without prepaying the required filing fees in the
2 appellate court, in other words Petitioner seeks IFP status on appeal. Dkt. No. 59. Pursuant to
3 FRAP 24, the Court GRANTS Petitioner's request for IFP status on appeal. *See also* 28 U.S.C.
4 § 1915(a)(1).

5 Plaintiff initially moved for a certificate of appealability on January 18, 2023. Dkt.
6 No. 57. Before the Court could rule on the motion, Plaintiff moved for a continuance, seeking
7 more time to prepare and file an amended motion. Dkt. No. 61. The Court granted Petitioner's
8 request for continuance, struck the previous motion for certificate of appealability from the
9 docket, and ordered Petitioner to file his amended motion by February 8, 2023. Dkt. No. 62. On
10 February 7, the day before his amended motion was due, Petitioner asked the Court to extend the
11 filing deadline for the amended petition to February 22, 2023. Dkt. No. 63. Despite claiming that
12 he would not be able to meet the deadline set by the Court, Petitioner filed his amended motion
13 the following day, on the original February 8 deadline. Dkt. No. 65. Since Petitioner was able to
14 file a timely amended motion, the Court DENIES as moot Petitioner's requested extension.

15 Finally, in his amended motion, Plaintiff requests a certificate of appealability from this
16 Court's final order on his Petition for a Writ of Habeas Corpus. "A certificate of appealability
17 may issue . . . only if the [petitioner] has made a substantial showing of the denial of a
18 constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner can satisfy this standard "by
19 demonstrating that jurists of reason could disagree with the district court's resolution of his
20 constitutional claims or that jurists could conclude the issues presented are adequate to deserve
21 encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack*
22 *v. McDaniel*, 529 U.S. 473, 484 (2000)). Petitioner has had several opportunities throughout the
23 pendency of his petition to establish a substantial showing of the denial of a constitutional right.
24 Petitioner's amended motion appears to make the same substantive arguments, based on the

1 same factual and legal assertions, that have been repeatedly rejected by this Court. *See* Dkt.
2 Nos. 51, 56. The Court therefore DENIES Mr. Smith's request for a certificate of appealability.

3 Dated this 27th day of March 2023.

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6 Tana Lin
7 United States District Judge
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